SENATE BILL No. 70

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5-3.

Synopsis: Charges for small consumer loans. Provides that for a supervised loan of at least $100 but not more than $1,000, a lender may charge both: (1) an acquisition charge of not more than 10% of the principal amount; and (2) a monthly installment account handling charge based on the amount of the loan; instead of the finance charge that otherwise would apply to a supervised loan. Sets forth procedures for refunding the acquisition charge and the installment account handling charge upon the prepayment in full, refinancing, or consolidation of the loan. Prohibits the lender from making insurance charges or other charges for such supervised loans.

Effective: Upon passage.

Paul

January 9, 2006, read first time and referred to Committee on Insurance and Financial Institutions.

Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 70

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-4.5-3-210 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 210. Rebate upon Prepayment. – (1) Except as provided in subsection (2) **or section 515 of this chapter,** upon prepayment in full of the unpaid balance of a precomputed consumer loan, refinancing, or consolidation, an amount not less than the unearned portion of the loan finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than one dollar ($1), no rebate need be made.

(2) Upon prepayment in full of a consumer loan, refinancing, or consolidation, other than one (1) under a revolving loan account, if the loan finance charge earned is less than any permitted minimum loan finance charge (IC 24-4.5-3-201(6) or IC 24-4.5-3-508(7)) contracted for, whether or not the consumer loan, refinancing, or consolidation is precomputed, the lender may collect or retain the minimum loan finance charge, as if earned, not exceeding the loan finance charge contracted for.

(3) The unearned portion of the loan finance charge is a fraction of

the loan finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the loan agreement or, if the balance owing resulted from a refinancing (IC 24-4.5-3-205) or a consolidation (IC 24-4.5-3-206), under the refinancing agreement or consolidation agreement.

(4) In this section:

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) "computation period" means one (1) month if one-half (1/2) or more of the intervals between scheduled payments under the agreement is one (1) month or more, and otherwise means one (1) week;

(c) the "interval" to the due date of the first scheduled installment or the final scheduled payment date is measured from the date of a loan, refinancing, or consolidation, and includes either the first or last day of the interval; and

(d) if the interval to the due date of the first scheduled installment does not exceed one (1) month by more than fifteen (15) days when the computational period is one (1) month, or eleven (11) days when the computational period is one (1) week, the interval shall be considered as one (1) computational period.

(5) This subsection applies only if the schedule of payments is not regular.

(a) If the computational period is one (1) month and:

(i) if the number of days in the interval to the due date of the first scheduled installment is less than one (1) month by more than five (5) days, or more than one (1) month by more than five (5) but not more than fifteen (15) days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than one (1) month and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than one (1) month; the adjustment for each day shall be one-thirtieth (1/30) of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one (1) month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if sixteen (16) days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one (1) month, the number of days in the interval to the due date of the first installment exceeds one (1) month by not more than fifteen (15) days, and the schedule of payments is otherwise regular, the lender, at the lender's option, may exclude the extra days and the charge for the extra days in computing the unearned loan finance charge; but if the lender does so and a rebate is required before the due date of the first scheduled installment, the lender shall compute the earned charge for each elapsed day as one-thirtieth (1/30) of the amount the earned charge would have been if the first interval had been one (1) month.

(c) If the computational period is one (1) week and:

(i) if the number of days in the interval to the due date of the first scheduled installment is less than five (5) days, or more than nine (9) days, but not more than eleven (11) days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than seven (7) days and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than seven (7) days; the adjustment for each day shall be one-seventh (1/7) of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled installment, assuming that period to be one (1) week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if five (5) days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (IC 24-4.5-3-204) has been agreed to, the unearned portion of the loan finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the loan finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the loan finance charge or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the lender of delinquency charges (IC 24-4.5-3-203, repealed in 1994).

(8) If the maturity is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer loan by the proceeds of consumer credit insurance (IC 24-4.5-4-103), the debtor or the debtor's estate shall pay the same loan finance charge or receive the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the lender, but no later than ten (10) business days after satisfactory proof of loss is furnished to the lender. This subsection applies whether or not the loan is precomputed.

(10) Upon prepayment in full of a transaction with a term of more than sixty-one (61) months, the unearned loan finance charge shall be computed by applying the disclosed annual percentage rate that would yield the loan finance charge originally contracted for to the unpaid balances of the amount financed for the full computational periods following the prepayment, as originally scheduled or as deferred.

SECTION 2. IC 24-4.5-3-508 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 508. Loan Finance Charge for Supervised Loans – (1) **Except as provided in section 515 of this chapter,** with respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is three hundred dollars ($300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than three hundred dollars ($300) but does not exceed one thousand dollars ($1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than one thousand dollars ($1,000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of contracting

for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) The amounts of three hundred dollars ($300) and one thousand dollars ($1,000) in subsection (2) and thirty dollars ($30) in subsection (7) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of thirty dollars ($30), the Reference Base Index to be used is the Index for October 1992.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars ($30).

SECTION 3. IC 24-4.5-3-515 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 515. (a) This section applies to a supervised loan, including a revolving loan account, that:**

(1) is made after March 28, 2006;

(2) is for a principal amount of at least one hundred dollars ($100) but not more than one thousand dollars ($1,000);

(3) has a minimum term of four (4) months;

(4) has a maximum term of twelve (12) months; and

(5) has a computation period (as defined in section 210(4)(b) of this chapter) of one (1) month.

(b) Except as provided in subsection (g), for a loan to which this section applies, a licensee may charge both of the following charges, instead of the maximum finance charge permitted under section 508 of this chapter:

(1) An acquisition charge for making the loan in an amount not more than ten percent (10%) of the principal amount.

(2) An installment account handling charge in an amount not more than the following:

(A) Twelve dollars ($12) per month for a loan for a principal amount of at least one hundred dollars ($100) but not more than three hundred dollars ($300).

(B) Fourteen dollars ($14) per month for a loan for a principal amount of more than three hundred dollars ($300) but not more than four hundred dollars ($400).

(C) Sixteen dollars ($16) per month for a loan for a principal amount of more than four hundred dollars ($400) but not more than five hundred dollars ($500).

(D) Seventeen dollars ($17) per month for a loan for a principal amount of more than five hundred dollars ($500) but not more than eight hundred dollars ($800).

(E) Twenty dollars ($20) per month for a loan for a principal amount of more than eight hundred dollars ($800) but not more than one thousand dollars ($1,000).

(c) The acquisition charge under subsection (b)(1) is not subject to rebate, except that if a loan is prepaid in full, refinanced, or consolidated not later than sixty (60) days after the date the loan is made, the first ten dollars ($10) of the acquisition charge shall be retained by the licensee and the remainder shall be rebated at the rate of one-sixtieth (1/60) of the amount of the remainder of the acquisition charge per day, beginning on the day after the date of the prepayment, refinancing, or consolidation and ending on the sixtieth day after the date the loan was made. However, a licensee is not required to provide a rebate under this subsection if the amount of the rebate calculated under this subsection is less than one dollar ($1).

(d) Upon prepayment in full, refinancing, or consolidation of the outstanding balance of a loan under this chapter, the unearned part of the installment account handling charge under subsection (b)(2) shall be refunded to the debtor. The unearned part shall be

determined under section 210(3) of this chapter. However, a licensee is not required to provide a rebate under this subsection if the amount of the rebate calculated under this subsection is less than one dollar ($1).

(e) The dollar amounts in subsections (b) and (c) are subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of ten dollars ($10) in subsection (c), the Reference Base Index to be used is the Index for October 1992.

(f) A licensee may not charge an insurance charge or any other charge for a loan to which this section applies. However, a licensee may charge the following for a loan to which this section applies:

(1) A delinquency charge under section 203.5 of this chapter.

(2) A charge under section 202(1)(f) of this chapter for a returned check, negotiable order of withdrawal, or share draft.

(3) Reasonable attorney's fees under section 404 of this chapter.

(g) The charges allowed under this section may not be imposed on a loan to a debtor that has more than one (1) loan outstanding with the licensee.

SECTION 4. **An emergency is declared for this act.**